

## **PROGRESS PAYMENTS**

[FP – NR&D, FP – R&D – 09/04] [FAR 52.232-16 – 04/03]

JPL will make payments to the Subcontractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by JPL, under the following conditions:

(a) Computation of Amounts.

- (1) Unless the Subcontractor requests a smaller amount, JPL will compute each progress payment as 85% of the Subcontractor's total costs incurred under this Subcontract, whether or not actually paid, plus progress payments to First-tier Subcontractors (see paragraph (j) below), less the sum of all previous progress payments made by the Institute under this Subcontract. Cost of money that would be allowable under FAR 31.205-10 and any corresponding implementing or supplementing provisions in the NFS shall be deemed an incurred cost for progress payment purposes.
- (2) The amount of progress payments for supplies and services directly for the Subcontract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to First-tier Subcontractors.
  - (i) In accordance with the terms and conditions of a First-tier Subcontract or invoice; and
  - (ii) Ordinarily within 30 days of the submission of the Subcontractor's payment request to JPL.
- (3) Accrued costs of Subcontractor contributions under employee pension shall be excluded until actually paid unless:
  - (A) The Subcontractor's practice is to contribute to the retirement fund quarterly or more frequently; and
  - (B) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the Subcontractor's total costs for progress payments until paid).
- (4) The Subcontractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1) of this Article:
  - (A) Costs that are not reasonable, allocable to this Subcontract, and consistent with sound and generally accepted accounting principles and practices.
  - (B) Costs incurred by First-tier Subcontractors or suppliers.
  - (C) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
  - (D) Payments made or amounts payable to First-tier Subcontractors or suppliers, except for:
    - (i) Completed work, including partial deliveries, to which the Subcontractor has acquired title; and
    - (ii) Work under cost-reimbursement or time-and-material First-tier Subcontracts to which the Subcontractor has acquired title.
- (5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to First-tier Subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this Subcontract, for which delivery and invoicing by the Subcontractor and acceptance by JPL are incomplete.
- (6) The total amount of progress payments shall not exceed 85% of the total Subcontract amount, or 85% of any current maximum liability of the Institute specified in the Subcontract. If any separate Subcontract action specifies a separate limit of the Institute's liability, then the total amount of progress payments for that action shall not exceed 80% of that separate limit and costs incurred for that action shall be segregated on progress payment requests and invoices.
- (7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(5) or (a)(6) above, the Subcontractor shall repay the amount of such excess to the Institute on demand.

- (8) Notwithstanding any other terms of the Subcontract, the Subcontractor agrees not to request progress payments in dollar amounts of less than \$2,500. JPL may make exceptions.
- (b) Liquidation. Except as provided in the "Termination for Convenience" Article, all progress payments shall be liquidated by deducting from any payment under this Subcontract, other than advance or progress payments, the unliquidated progress payments, or 85% of the amount invoiced, whichever is less. The Subcontractor shall repay to the Institute any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. JPL reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper Subcontract financing.
- (c) Reduction or Suspension. JPL may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:
- (1) The Subcontractor failed to comply with any material requirement of this Subcontract (which includes paragraphs (f) and (g) below.)
  - (2) Performance of this Subcontract is endangered by the Subcontractor's (i) failure to make progress or (ii) unsatisfactory financial condition.
  - (3) Inventory allocated to this Subcontract substantially exceeds reasonable requirements.
  - (4) The Subcontractor is delinquent in payment of the costs of performing this Subcontract in the ordinary course of business.
  - (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this Subcontract.
  - (6) The Subcontractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.
- (d) Title.
- (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this Subcontract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this Subcontract.
  - (2) "Property," as used in this Article, includes all of the below-described items acquired or produced by the Subcontractor that are or should be allocable or properly chargeable to this Subcontract under sound and generally accepted accounting principles and practices.
    - (A) Parts, materials, inventories, and work in process;
    - (B) Special tooling and special test equipment to which the Government is to acquire title under any other Article of this Subcontract;
    - (C) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (2)(B) above; and
    - (D) Drawings and technical data, to the extent the Subcontractor or First-tier Subcontractors are required to deliver them to JPL by other Articles of this Subcontract.
  - (3) Although title to property is in the Government under this Article, other applicable Articles of this Subcontract (e.g., the "Termination" or "Special Tooling" Articles) shall determine the handling and disposition of the property.
  - (4) The Subcontractor may sell any scrap resulting from production under this Subcontract without requesting JPL's approval, but the proceeds shall be credited against the costs of performance.
  - (5) To acquire for its own use or dispose of property to which title is vested in the Government under this Article, the Subcontractor must obtain JPL's advance approval of the action and the terms. The Subcontractor shall (i) exclude the allocable costs of the property from the costs of Subcontract performance, and (ii) repay to the Institute any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

- (6) When the Subcontractor completes all of the obligations under this Subcontract, including liquidation of all progress payments, title shall vest in the Subcontractor for all property (or the proceeds thereof) not:
  - (A) Delivered to, and accepted by, JPL under this Subcontract; or
  - (B) Incorporated in supplies delivered to, and accepted by, JPL under this Subcontract and to which title is vested in the Government under this Article.
- (7) The terms of this Subcontract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this Article.
- (e) Risk of Loss. Before delivery to and acceptance by JPL, the Subcontractor shall bear the risk of loss for property, the title to which vests in the Government under this Article, except to the extent JPL expressly assumes the risk. The Subcontractor shall repay the Institute an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.
- (f) Control of Costs and Property. The Subcontractor shall maintain an accounting system and controls adequate for the proper administration of this Article.
- (g) Reports and Access to Records. The Subcontractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Government or JPL for the administration of this Article. Also, the Subcontractor shall give the Government or JPL reasonable opportunity to examine and verify the Subcontractor's books, records, and accounts.
- (h) Special Terms Regarding Default. If this Subcontract is terminated under the "Default" Article, (i) the Subcontractor shall, on demand, repay to the Institute the amount of unliquidated progress payments and (ii) title shall vest in the Subcontractor, on full liquidation of progress payments, for all property for which JPL elects not to require delivery under the "Default" Article. The Institute shall be liable for no payment except as provided by the "Default" Article.
- (i) Reservations of Rights.
  - (1) No payment or vesting of title under this Article shall (i) excuse the Subcontractor from performance of obligations under this Subcontract or (ii) constitute a waiver of any of the rights or remedies of the parties under the Subcontract.
  - (2) JPL's rights and remedies under this Article (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this Subcontract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this Article or the exercise of any other right, power, or privilege of JPL.
- (j) Progress Payments to First-tier Subcontractors. The progress payments mentioned in (a)(1) and (a) (2) above shall be all progress payments to First-tier Subcontractors or divisions, if the following conditions are met:
  - (1) The amounts included are limited to (A) the unliquidated remainder of progress payments made. plus (B) any unpaid First-tier Subcontractor requests for progress payments.
  - (2) The First-tier Subcontract or interdivisional order is expected to involve a minimum of approximately six months between the beginning of work and the first delivery, or, if the First-tier Subcontractor is a small business concern, four months.
  - (3) The terms of the subcontract or interdivisional order concerning progress payments:
    - (A) Are substantially similar to the terms in FAR 52.232-16 and any corresponding implementing or supplementing provisions in the NFS for any First-tier Subcontractor that is a large business concern, or that clause with its Alternate I for any First-tier Subcontractor that is a small business concern;
    - (B) Are at least as favorable to JPL as the terms of this Article;
    - (C) Are not more favorable to the First-tier Subcontractor or division than the terms of this Article are to the Subcontractor;
    - (D) Are in conformance with the requirements of FAR paragraph 32.504(e) and any corresponding implementing or supplementing provisions in the NFS; and

- (E) Subordinate all First-tier Subcontractor rights concerning property to which the Government has title under the First-tier Subcontract to JPL's right to require delivery of the property to JPL if (i) the Subcontractor defaults, or (ii) the First-tier Subcontractor becomes bankrupt or insolvent.
- (4) The progress payment rate in the First-tier Subcontract is the customary rate used by NASA, depending on whether the First-tier Subcontractor is or is not a small business concern.
- (5) The parties agree concerning any proceeds received by the Institute for property to which title has vested in the Government under the First-tier Subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by JPL to the Subcontractor under this Subcontract.
- (6) If no unliquidated progress payments to the Subcontractor remain, but there are unliquidated progress payments that the Subcontractor has made to any First-tier Subcontractor, the Subcontractor shall be subrogated to all the rights the Institute obtained through the terms required by this Article to be in any First-tier Subcontract, as if all such rights had been transferred to the Subcontractor.
- (7) To facilitate small business participation in First-tier Subcontracting under this Subcontract, the Subcontractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in FAR Subpart 32.5 and any corresponding implementing or supplementing provisions in the NFS. The Subcontractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of First-tier Subcontracts.